

**Katherine Nutt**



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OPEN MEETING AGENDA ITEM

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**From:** Cristina Arzaga-Williams  
**Sent:** Friday, March 26, 2010 11:35 AM  
**To:** Katherine Nutt  
**Subject:** FW: Hualapai Valley Solar- Arizona Building Trades Council  
**Attachments:** Letter to Tom Campbell.pdf

**ORIGINAL**

please print and make sure this gets docketed.

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**From:** Maureen Koonsman [mailto:maureen@thetorresfirm.com]  
**Sent:** Friday, March 26, 2010 11:33 AM  
**To:** 'tcampbell@lrlaw.com'  
**Cc:** 'john.foreman@azag.gov'; Mayes-WebEmail; Pierce-Web; Newman-Web; Kennedy-Web; Stump-Web; Giancarlo Estrada; John LeSueur; 'nlapaca@azcc.gov'; Cristina Arzaga-Williams; 'amandaho@azcc.gov'; Janice Alward; 'thogan@aclpi.org'  
**Subject:** Hualapai Valley Solar- Arizona Building Trades Council

Please see attached letter from Mr. Torres.

Maureen Koonsman  
Torres Consulting and Law Group, LLC  
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VIA ELECTRONIC MAIL AND U.S. MAIL

March 26, 2010

Tom Campbell, Esq.  
Lewis and Roca, LLP  
40 N. Central  
Phoenix, AZ 85004-4429

Re: Model Construction Labor Agreement, Hualapai Valley Solar

Dear Tom,

As a follow up to the Line Siting Committee meeting (Committee) on January 12, 2010, in Case 151 filed with the Arizona Corporation Commission (ACC), I wish to again reach out to Hualapai Valley Solar, LLC (HVS) as stipulated in the Line Siting Committee Certificate of Environmental Compatibility (CEC).<sup>1</sup>

It is our understanding from HVS's testimony at the Committee and other sources that HVS is actively soliciting proposals from several out of state and out of country general contractors for the construction of this solar facility. As I mentioned at the Committee, if HVS intends to comply with the aforementioned CEC stipulation to commence good faith negotiations for a model construction agreement with the Arizona Building and Construction Trades Council (BTC), certain and specific information pertaining to a local hiring model, wages, and benefits must be incorporated into the initial solicitation from HVS to its potential contractors. Put another way, if HVS is soliciting proposals without this necessary information, it is clear that HVS has no intention of complying with the Committee's stipulation of good faith negotiation.

Equally concerning is the existing economic climate and significant unemployment throughout the southwest that would enable an unscrupulous and out of state general contractor to import out of state workers to flood the local market. It was clear that the Committee's intent was to provide a hiring model that would that ensure good paying jobs are provided to Mohave County first.

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<sup>1</sup> Within ninety (90) days of the Commission decision granting this Certificate, the applicant shall make good faith efforts to commence discussions with the Arizona Building Trades Council on a model construction agreement to encourage the utilization of qualified local or Arizona union or non-union construction workers for the construction of the Project – Condition 28, Hualapai Valley Solar Certificate of Environmental Compatibility.

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The Arizona Building and Construction Trades Council (BCTC) stands ready to negotiate a model construction labor agreement that ensures local workers and Arizonans are trained and hired to perform the construction of this facility.

By way of background and to provide an introduction to our discussion, I have included *some* provisions of a model construction agreement recently negotiated by the BCTC and an out of state General Contractor for your review. You will notice the provisions are reasonable, fair, and ensure that workers from Mohave County and Arizona would be employed to construct this facility.

<p><b>PROJECT LABOR AGREEMENT MODEL PROVISIONS HUALAPAI VALLEY SOLAR, LLC MOHAVE COUNTY, ARIZONA</b></p>
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1. It is understood, that this is a self-contained, stand alone Agreement and that by virtue of having become bound to this Agreement, neither the Project Contractor nor the Contractors will be obligated to be signatory or to prospectively sign any other local, area, or national agreement. Project Contractor may select any contractor to perform work on the Project, whether or not they have executed agreements with any Local Unions and Project Contractor shall not be bound to any subcontracting limitations contained in any labor agreement.
2. The Unions agree that this agreement will be made available to, and will fully apply to, any successful bidder for Project Work who becomes signatory hereto, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis, without regard to whether they are otherwise parties to collective bargaining agreements and without regard to whether employees of such successful bidder are, or are not, members of any unions.
3. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.
4. No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, on the Project.
5. Contractors may utilize the most efficient methods or techniques of construction, tools, or other labor saving devices. Any practices which conflict with this subsection or which are not specifically written in this Agreement shall not apply.
6. There shall be no limitations upon the choice of materials or design.

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7. There shall be no restriction on the number of employees assigned to any crew or to any service.
8. Contractors shall be entitled to select foremen of their own choosing; designate the assignment and schedule of work, the determination of when it will be worked; and to establish coordinated working hours and starting times.
9. There shall be no limit on production by workmen, nor restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.
10. The Contractor(s) shall be the sole judge of the number and classifications of employees required to perform work subject to this Agreement. The Contractor(s) shall have the absolute right to hire, promote, suspend, discharge or lay off employees at their discretion and to reject any applicant for employment.
11. Nothing in this Agreement shall be construed to limit the right of any of the Contractors to select the lowest bidder he deems qualified for the award of contracts or subcontracts or material or equipment purchase orders on the Project.
12. Contractors may establish such reasonable Project rules as are appropriate for the good order of the Project. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge.
13. It is recognized that certain equipment and systems of a highly technical and specialized nature may be installed at the Project. The nature of the equipment and systems, together with requirements of manufacturer's warranty may dictate that it be prefabricated, pre-piped, and/or pre-wired and that it be installed by the specialized personnel. The Unions agree that such equipment and systems shall be installed without incident and shall not be subject to this Project Labor Agreement except at the discretion of Project Contractor.
14. All Contractors retain the right to reject for good reason any person referred by a Union.
15. The Contractor shall have the right to determine the competency of all employees, the number of employees required and shall have the sole responsibility for selecting employees to be laid off. The Contractor shall also have the right to reject any applicant referred by a local Union.
16. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, slow-down or other disruptive activity of any nature. The Contractor's assignment shall be adhered to until the dispute is resolved in a manner requiring a different assignment. Individuals violating this section shall be

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subject to immediate discharge. No Contractor shall be liable to any party for any claim for damages, including but not limited to a claim for wages or benefit fund contributions, arising out of an assignment or reassignment of work under this Agreement or any other agreement.

17. During the term of this Agreement, there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason (including but not limited to disputes relating to the negotiation or renegotiation of the local collective bargaining agreements which serve as the basis for the Schedule As, economic strikes, unfair labor practices strikes, safety strikes, sympathy strikes, and jurisdictional strikes) by any Union or employees working under this Agreement against any Contractor covered under this Agreement or the Project, and there shall be no lockout by any Contractor. Failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to the Agreement, or by any other organization or individual at or in proximity to the Project construction site is a violation of this Article. The Unions agree that they shall not incite, sanction, aid or abet, encourage or continue any such disruptive activity and shall undertake all reasonable means to prevent or terminate it.
18. There shall be no rest period, organized coffee breaks or other nonworking time during paid working hours, unless specified by the Contractor or unless required by applicable prevailing wage law.
19. Any Contractor may impose a reasonable drug and alcohol testing program upon notice to the Unions. Such testing program may include pre-employment, post-incident, for cause and/or random testing.

### ARIZONA HIRING MODEL

Section 1. There shall be no discrimination against any employee or applicant for training or employment because of his or her membership or non-membership in the Union.

Section 2. Unions shall comply with all applicable affirmative action and equal employment opportunity requirements.

Section 3. Nothing in this PLA shall be deemed to limit a Contractor's right to reject proposed employees, provided that such right is exercised in good faith and without regard to the individual's status as a union member, race, national origin, religion, age or physical handicap if the employee can perform the essentials of the job.

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Section 3. Contractors shall secure apprentices and journeymen for each craft from the Union signatory hereto which represents such craft. The terms of the hiring hall procedures normally used by said union shall apply, except that the criteria for placement on the out of work list, dispatch for work and selection for layoff shall be modified to provide:

- (a) Any person who is a current resident of Mohave County and who has resided in Mohave County for at least 6 months prior to seeking to register for work shall be given first preference.
- (b) Any person who has not continuously resided in Mohave County for at least 6 months prior to seeking registration, but who (i) has resided in Mohave County for at least 4 months of the last 5 years, or (ii) attended school for at least 2 semesters within the last 10 years shall be entitled to the next level of preference.
- (c) "Preference" as used herein shall apply to slotting the person relative to other similarly qualified persons on the hiring hall list, selection for dispatch and selection among similarly qualified persons for layoff.
- (d) The term "reside" means occupying a dwelling place within Mohave County on a regular basis. Time spent in the United States Military satisfies this residency requirement provided that the registrant resides in Mohave County immediately prior to his/her entry into the military and returns immediately to Mohave County, Arizona upon discharge from the military. The registrant must establish residency status and may do so by offering a combination of any of the following: a mortgage payment book or other evidence of ownership of a house in which the registrant dwells within Mohave County; a lease pertaining to a house, apartment in which the registrant dwells within Mohave County; an Arizona State vehicle registration or driver's license listing a Mohave County address; proof of voter's registration in Arizona with a Mohave County address; proof that the registrant's spouse and minor children reside within Mohave County; proof that the registrant's minor children are enrolled in schools within Mohave County; proof that the registrant declared himself to be a resident of Mohave County on any tax form submitted to the federal government or the State of Arizona; and, any other evidence reflecting the

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date on which the individual began residing within Mohave County and the registrant's current intent to remain a resident.

Again, these provisions are intended to provide HVS with an idea of *some* of the provisions in a model construction labor agreement. Please remember that these are not exhaustive and successful agreements are tailor-made for specific projects.

I look forward to discussing in more detail any information needed by HVS prior to selecting a general contractor.

Sincerely,



Israel G. Torres

cc: Chairman Kristin K. Mayes  
Commissioner Gary Pierce  
Commissioner Paul Newman  
Commissioner Sandra D. Kennedy  
Commissioner Bob Stump  
Committee Chairman John Foreman  
Janice Alward, Chief Counsel  
Giancarlo Estrada  
John LeSueur  
Nancy La Placa  
Christina Arzaga-Williams  
Amanda Ho  
Timothy M. Hogan